IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6969 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADANLAL @ MADIYO SHIVAJI BHAT

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

Mr.D.N.Patel, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 03/03/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India as he has been detained by the respondent no.1 in exercise of powers conferred on him under the provisions contained in the Gujarat Prevention of Anti-Social Activities, 1985 ("PASA Act"

for short).

2. The detenu has been detained vide order dated 30th July, 1999 (Annexure A to the petition). The grounds of detention dated 13.7.1999 are served upon the detenu at Annexure C to the petition. It is clear that seven cases have been registered in the Police Station from 1997 to 1999 out of which 4 cases are pending. In 4 cases chargesheets have already been filed and the detenu is facing trial and in 3 cases investigation is pending. From this, it appears that the detenu is in habit in dealing in sale of prohibited liquor. Apart from that ground of detention, it is clear that the detenu is in habit of beating innocent persons who refused to permit him to put the prohibited articles in their houses which are mentioned in the grounds of detention. Even he is such a dangerous person that people are not coming forward to give statements against him. Thus, the Detaining Authority was satisfied that he was a bootlegger and is required to be detained.

3. Without going into the legality into the ground of detention, this matter is required to be disposed of on a short ground that the respondent no.1 has not sent the report forthwith to the State Government alongwith the grounds of detention under Section 3(3) of the PASA Act. The specific ground has been raised in Para 12 of the petition which is as under:-

> "16. The petitioner respectfully states and submits that the respondent No.1 has not sent the report forthwith to the State Government alongwith the grounds of detention under Section 3(3) of the PASA Act and under the circumstances, there is clear breach of the statutory provisions of the PASA Act and thus, the continued detention of the detenu-petitioner is illegal which required to be quashed and set aside by this Honourable Court."

4. It is required to be noted that in number of cases the Court has pointed out that it is the duty of the Detaining Authority to make a report as contemplated under Section 3(3) of the Act soon after the order is passed. In the instant case, affidavit in reply has not been filed by the Detaining Authority or the State Government and it is not possible for this Court to reject the contention raised by the detenu and therefore the order of continued detention is required to be held bad and illegal. The petition is allowed. Rule made absolute.

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